

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES, LLC,

X

: Index No. 652933/2012

Counterclaim Plaintiffs,

-against-

DISCOVER PROPERTY & CASUALTY
COMPANY, ST. PAUL PROTECTIVE
INSURANCE, TRAVELERS CASUALTY
& SURETY COMPANY, TRAVELERS
INDEMNITY COMPANY AND
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

: ALTERRA AMERICA INSURANCE
COMPANY'S REPLY TO NFL
DEFENDANTS AND CROSS-CLAIM
PLAINTIFFS' SECOND AMENDED
COUNTERCLAIMS AND CROSS-CLAIMS

Counterclaim Defendants.

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES, LLC,

Cross-claim Plaintiffs,

-against-

ALTERRA AMERICA INSURANCE
COMPANY, FIREMAN'S
FUND INSURANCE COMPANY, TIG
INSURANCE COMPANY, CENTURY
INDEMNITY COMPANY, FEDERAL
INSURANCE COMPANY, GREAT
NORTHERN INSURANCE COMPANY,
GUARANTEE INSURANCE COMPANY,
HARTFORD ACCIDENT & INDEMNITY
COMPANY, NORTH RIVER INSURANCE
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, ACE
AMERICAN INSURANCE COMPANY,
ILLINOIS UNION INSURANCE
COMPANY, ALLSTATE INSURANCE
COMPANY, AMERICAN GUARANTEE
AND LIABILITY INSURANCE
COMPANY, ARROWOOD INDEMNITY

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COMPANY, CHARTIS SPECIALTY	:
INSURANCE COMPANY, CHARTIS	:
PROPERTY CASUALTY COMPANY,	:
CONTINENTAL CASUALTY COMPANY,	:
CONTINENTAL INSURANCE	:
COMPANY, ILLINOIS NATIONAL	:
INSURANCE COMPANY, MUNICH	:
REINSURANCE AMERICA, INC.,	:
NATIONAL UNION FIRE INSURANCE	:
COMPANY OF PITTSBURGH, PA, NEW	:
ENGLAND REINSURANCE	:
CORPORATION, ONEBEACON	:
AMERICA INSURANCE COMPANY,	:
VIGILANT INSURANCE COMPANY,	:
WESTCHESTER FIRE INSURANCE	:
COMPANY, XL INSURANCE AMERICA,	:
INC., XL SELECT INSURANCE	:
COMPANY and WESTPORT INSURANCE	:
CORPORATION,	:
	:
	:
Cross-claim Defendants.	:
	X

Cross-claim Defendant Alterra America Insurance Company (“Alterra”) responds as follows to the Second Amended Counterclaims and Cross-claims (“Second Amended Cross-claims”) by Cross-claim Plaintiffs National Football League and NFL Properties LLC (collectively “NFL Defendants”):

The Second Amended Counterclaims and Cross-claims start with a series of un-numbered paragraphs to which Alterra does not believe a response is required. To the extent a response is required Alterra refers the Court to its responses to the numbered paragraphs containing the allegations referenced in the un-numbered paragraphs.

1. Alterra admits the allegations in Paragraph 1.

2. Alterra admits that NFL Properties is a limited liability company organized under the laws of Delaware, with headquarters in New York, but lacks knowledge and information sufficient to form a belief as to the remaining allegations in Paragraph 2.

3. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 3.

4. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 4.

5. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 5.

6. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 6.

7. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 7.

8. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 8.

9. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 9.

10. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 10.

11. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 11.

12. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 12.

13. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 13.

14. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 14.

15. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 15.

16. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 16.

17. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 17.

18. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 18.

19. Alterra admits the allegations in Paragraph 19.

20. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 20.

21. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 21.

22. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 22.

23. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 23.

24. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 24.

25. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 25.

26. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 26.

27. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 27.

28. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 28.

29. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 29.

30. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 30.

31. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 31.

32. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 32.

33. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 33.

34. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 34.

35. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 35.

36. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 36.

37. The allegations contained in Paragraph 37 do not apply to Alterra and, therefore, do not require a response. To the extent a response is required Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 37.

38. The allegations contained in Paragraph 38 do not apply to Alterra and, therefore, do not require a response. To the extent a response is required Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 38.

39. Alterra admits that its excess policy contains terms and conditions that may require Alterra to pay certain losses on behalf of the NFL, refers the Court to the policy for its complete terms and conditions, denies the remaining allegations in Paragraph 39 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the allegations pertaining to the other Counterclaim and Cross-claim Defendants.

40. Alterra admits that its excess policy is an occurrence-based policy and that any duty to indemnify is triggered by occurrences within its policy period, refers the Court to the policy for its complete terms and conditions and otherwise denies the remaining allegations in Paragraph 40.

41. The allegations contained in Paragraph 41 do not apply to Alterra and, therefore, do not require a response. To the extent a response is required Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 41.

42. Alterra admits that all premiums were paid on its excess policy and denies the remaining allegations in Paragraph 42.

43. Alterra admits that the NFL has been named as a Defendant in lawsuits filed by former football players and their spouses (the “Underlying Lawsuits”). Alterra lacks knowledge and information sufficient to form a belief as to the exact number of lawsuits filed against the NFL. Alterra admits that NFL Properties has been named as a Defendant on certain claims in the Underlying Lawsuits. Alterra lacks knowledge and information sufficient to form a belief as to the exact number of lawsuits filed in which claims have been asserted against NFL Properties. Alterra admits the remaining allegations in Paragraph 43.

44. Alterra admits that the NFL Defendants retained Paul Weiss as lead defense counsel in the Underlying Lawsuits, but lacks knowledge and information sufficient to form a belief as to the retention of local counsel and the quantum of defense costs incurred.

45. Alterra admits the allegations in Paragraph 45.

46. Alterra admits that the parties in the Underlying Lawsuits reached an agreement in principle to resolve the dispute, but lacks knowledge and information sufficient to form a belief as to the date of the agreement and admits the remaining allegations in Paragraph 46.

47. Alterra admits the allegations in Paragraph 47.

48. Alterra admits the allegations in Paragraph 48.

49. Alterra admits the allegations in Paragraph 49.

50. Alterra admits the allegations in Paragraph 50.

51. Alterra admits the allegations in Paragraph 51.

52. In reply to the allegations contained in Paragraph 52, Alterra refers the Court to the terms of the Class Settlement and lacks knowledge and information sufficient to form a belief as to the date payments under the Class Settlement were made or completed.

53. In reply to the allegations contained in Paragraph 53, Alterra refers the Court to the terms of the Class Settlement.

54. In reply to the allegations contained in Paragraph 54, Alterra refers the Court to the terms of the Class Settlement.

55. Alterra admits the allegations in Paragraph 55 in general, but lacks knowledge and information sufficient to form a belief as to the number of opt-out plaintiffs and refers the court to the terms of the Class Settlement for the rights of the opt-out plaintiffs to pursue claims against the NFL Defendants.

56. Alterra admits that the NFL Defendants provided certain limited information regarding the Underlying Litigation and negotiations that culminated in the Class Settlement, but lacks knowledge and information sufficient to form a belief as to what was provided to the other Counterclaim and Cross-claim Defendants.

57. Alterra admits that the NFL Defendants on more than one occasion sought Alterra's consent to the Class Settlement, denies the remaining allegations contained in Paragraph 57 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

58. The allegations set forth in Paragraph 58 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 58.

59. Alterra admits that it did not affirmatively respond to the NFL Defendants' requests for consent, denies the remaining allegations in Paragraph 59 that pertain to Alterra and

lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

60. Alterra denies the allegations contained in Paragraph 60 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

61. The allegations set forth in Paragraph 61 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 61.

62. The allegations set forth in Paragraph 62 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 62.

63. The allegations set forth in Paragraph 63 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 63.

64. The allegations set forth in Paragraph 64 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 64.

65. The allegations set forth in Paragraph 65 do not apply to Alterra and, therefore, do not require a response. To the extent that a response is required, Alterra lacks

knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 65.

66. Alterra admits that the NFL Defendants notified it that the Class Settlement and the district court's Amended Final Order and Judgment became final and effective on January 7, 2017, and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

67. In response to Paragraph 67, Alterra refers the Court to the terms of the Class Settlement and the Amended Final Order and Judgment for the rights and responsibilities of the applicable parties.

68. Alterra denies the allegations in Paragraph 68 to the extent they are directed to Alterra and lacks knowledge and information sufficient to form a belief as to the obligations of other Counterclaim and Cross-claim Defendants.

69. Alterra admits that it has denied any obligation to indemnify the NFL Defendants for losses arising from the Underlying Litigation and lacks knowledge and information sufficient to form a belief as to the actions of other Counterclaim and Cross-claim Defendants.

Count I:
Cause of Action for Breach of Contract as to the Duty to Defend

70. Alterra incorporates by reference its responses to Paragraphs 1 – 69 above.

71. The allegations set forth in Count I of the and in particular Paragraph 71 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 71.

72. The allegations set forth in Count I of the and in particular Paragraph 72 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 72.

73. The allegations set forth in Count I of the and in particular Paragraph 73 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 73.

Count II:
Cause of Action for Declaratory Relief as to the Duty to Defend

74. Alterra incorporates by reference its responses to Paragraphs 1 – 73 above.

75. The allegations set forth in Count II of the and in particular Paragraph 75 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 75.

76. The allegations set forth in Count II of the and in particular Paragraph 76 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 76.

77. The allegations set forth in Count II of the and in particular Paragraph 77 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 77.

78. The allegations set forth in Count II of the and in particular Paragraph 78 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 78.

79. The allegations set forth in Count II of the and in particular Paragraph 79 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 79.

80. The allegations set forth in Count II of the and in particular Paragraph 80 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 80.

**Count III:
Cause of Action for Breach of the Duty to
Indemnify the NFL and NFL Properties for the Class Settlement**

81. Alterra incorporates by reference its responses to Paragraphs 1 – 80 above.

82. The allegations set forth in Count III of the and in particular Paragraph 82 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 82.

83. The allegations set forth in Count III of the and in particular Paragraph 83 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 83.

84. The allegations set forth in Count III of the and in particular Paragraph 84 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 84.

85. The allegations set forth in Count III of the and in particular Paragraph 85 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 85.

86. The allegations set forth in Count III of the and in particular Paragraph 86 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 86.

87. The allegations set forth in Count III of the and in particular Paragraph 87 are not directed toward Alterra and thus no response is required. To the extent that a response is required, Alterra lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 87.

Count IV:
**Cause of Action for Declaratory Relief as to the Duty to
Indemnify the NFLP and NFL Properties for the Class Settlement
and Any Other Settlement or Judgment in the Underlying Lawsuits**

88. Alterra incorporates by reference its responses to Paragraphs 1 – 87 above.

89. Alterra admits the allegations in Paragraph 89 and refers the Court to the terms and conditions of Alterra's excess policy.

90. Alterra denies the allegations contained in Paragraph 90 as they apply to Alterra and its obligations under its excess policy for the Underlying Lawsuits, refers the Court

to the terms and conditions of Alterra's excess policy for an accurate statement of Alterra's obligations under its excess policy and lacks knowledge and information sufficient to form a belief as to the obligations of the other Counterclaim and Cross-claim Defendants under their policies.

91. Alterra admits that the NFL Defendants have incurred costs and payment obligations concerning the Underlying Litigation, including the Class Action Settlement and Amended Final Order and Judgment, refers the Court to the Class Action Settlement and Amended Final Order and Judgment for their terms and conditions relevant to the NFL Defendants' obligations, denies the remaining allegations in Paragraph 91 concerning Alterra and lacks knowledge and information sufficient to form a belief as to the obligations of the other Counterclaim and Cross-claim Defendants under their policies.

92. Alterra denies the allegations in Paragraph 92 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

93. Alterra denies the allegations in Paragraph 93 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

Count V:
Cause of Action for Declaratory Relief as to
Certain Insurers' Bad Faith Refusal to Consent to the Class Settlement

94. Alterra incorporates by reference its responses to Paragraphs 1 – 93 above.

95. Alterra lacks knowledge and information sufficient to form a belief as to the allegations in Paragraph 95 and refers the Court to the terms and conditions of Class Settlement.

96. Alterra denies the allegations contained in Paragraph 96 as they apply to Alterra and its obligations under its excess policy for the Underlying Lawsuits, refers the Court to the terms and conditions of Alterra's excess policy for an accurate statement of Alterra's obligations under its excess policy and lacks knowledge and information sufficient to form a belief as to the obligations of the other Counterclaim and Cross-claim Defendants under their policies.

97. Alterra admits that it did not respond to the NFL Defendants' requests for consent, denies the remaining allegations in Paragraph 97 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the obligations of the other Counterclaim and Cross-claim Defendants.

98. Alterra denies the allegations in Paragraph 98 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

99. Alterra denies the allegations in Paragraph 99 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

100. Alterra denies the allegations in Paragraph 100 as pertains to Alterra and lacks knowledge and information sufficient to form a belief as to the other Counterclaim and Cross-claim Defendants.

WHEREFORE, Alterra demands that all cross-claims be dismissed with prejudice and without cost.

Dated: New York, New York
April 10, 2017

Squire Patton Boggs (US) LLP
30 Rockefeller Plaza
New York, New York 10112
+1 212 872 9800

By: /s/ Larry P. Schiffer
Larry P. Schiffer
Attorneys for Cross-claim Defendant
Alterra America Insurance Company

AFFIRMATION OF SERVICE

I, Larry P. Schiffer, an attorney admitted to practice in the courts of the State of New York, affirm under penalty of perjury that:

- 1) I am a Partner at the law firm of Squire Patton Boggs (US) LLP, attorneys for Defendant Alterra America Insurance Company in the above captioned action.
- 2) I am over the age of eighteen and I am not a party to this action.
- 3) On April 10, 2017, I caused to be served a copy of Defendant Alterra America Insurance Company's Reply to NFL Defendants and Cross-Claim Plaintiff's Second Amended Counterclaims and Cross-Claims onto all counsel of record in this action via the New York State Court Electronic Filing system.

Dated: New York, New York
April 10, 2017

Squire Patton Boggs (US) LLP
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By: /s/ Larry P. Schiffer
Larry P. Schiffer
Attorneys for Defendant
Alterra America Insurance Company